

HUMAN SERVICES

Access to Records

Proposed New Rules: N.J.A.C. 10:1B

Submit comments to:

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A partial summary, social and economic impact statements of the agency proposal follow:

Summary

On January 8, 2002, the Legislature passed and the Acting Governor approved P.L. 2001, c. 404, known as the Open Public Records Act, which enacted changes in the law concerning public access to government records. The law will be effective July 7, 2002. This law expands the public's right of access to government records and facilitates the way in which that access is provided by the custodian of those records. Section 18 of the law authorizes public agencies to take anticipatory administrative action in advance as may be necessary for the smooth and efficient implementation of the act.

The Department of Human Services proposes rules establishing the process by which members of the public may seek access to government records in the possession or control of the Department or agencies within the Department under the revised law. The act requires the custodian of government records of a public agency to adopt a form for providing public access to government records. The proposed rules in Subchapter 1B establish a process to be followed by members of the public who seek access to government records held or controlled by agencies within the Department.

The act provides that all government records shall be subject to public access unless exempt from such access by: P.L. 1963, c.73 as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Rules of Court; any Federal law, Federal regulation or Federal order. The Commissioner, pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), proposes to classify as exempt from public access certain records held or controlled by the Department or agencies within the Department. The act also provides that a public agency should be mindful of the need to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy. The rules proposed in Subchapter 1B are designed to serve both these legislative policies by facilitating public access to government records while, at the same time, balancing citizen's reasonable expectations of privacy and the integrity and effectiveness of governmental operations.

Social Impact

The proposed new rules implement the requirements of N.J.S.A. 47:1A-1 et seq. as amended and supplemented by P.L. 2001, c.404. The proposed new rules will have a positive social impact by

establishing a procedure for public access to government records held or controlled by the Department of Human Services. The law requires that government records be readily accessible for inspection, copying or examination by citizens of this State unless exempt by law or regulation, but also calls upon a public agency to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure would violate the citizen's reasonable expectation of privacy. These proposed new rules attempt to balance the competing policies in the statute and to exclude records where it would not be in the public interest to permit indiscriminate disclosure or copying of certain records.

Economic Impact

The proposed new rules will not have an economic impact on the public in excess of that provided by the statute. Persons requesting copies of government records will be required to pay the fees authorized by the statute for copies of records. The proposed rules do not impose any additional costs. The cost incurred will depend on the type and volume of records requested and the medium of delivery.

The Department, however, will incur costs in processing requests for access to government records in the time set by the Act. It is anticipated that costs will be incurred by the Department, all divisions and agencies in the Department, and providers in conforming to recordkeeping and documentation requirements. Once implemented, these protocol and documentation requirements will cause additional operating and personnel costs to the Department, its divisions and agencies. Specifically, the proposed legislation mandates that an agency designate a Custodian of Records to coordinate and respond to public requests for records. The Department has a significant number of

divisions, offices and agencies that will be required to designate custodians due in part to the size and decentralized nature of the Department's operations. For example, the Division of Mental Health Services will be designating at least ten custodians for the division's central office, regional offices and facilities. A disruption of work-flow may occur depending on the volume of the records sought because the Department, its divisions and agencies within the Department, will be required to use existing staff as custodians in addition to their existing responsibilities. Reallocated existing personnel will be required to oversee uniformity and timeliness in the processing and managing of public requests for records in accordance with the proposed law within a climate of downsizing. Such reallocation of personnel will also be necessary, since failure of the Department to respond to requests for records in a timely fashion could result in fines being imposed for non-compliance, as provided by law.